



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 18, 2022

Sarah Lang
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455 Capitol Mall, Suite 600
Sacramento CA, 95814

Re: Your Request for Advice
Our File No. I-22-110

Dear Ms. Lang

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹ Because you seek guidance on a plan for funding an anticipated educational program involving unnamed agencies and personnel, we can offer only informal assistance.² Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

You ask that we review for compliance with the Act’s gift rules a planned extension of an existing educational fellowship program that CALF would offer to management-level employees of state agencies, as well as counties and cities, entrusted with regulatory authority over state and local agricultural policies.

CONCLUSION

CALF’s current plan to raise funds for the California Regulatory Agency Fellows Program would not result in classification of donors as sources of gifts to public officials. Rather, the source of any gifts would be CALF which, as a *bona fide* 501(c)(3) nonprofit corporation. However, so long as the program is provided for the purpose of educating the participants in matters related to the performance of their official duties, the value of the program itself and the course materials provided in connection with the educational program are educational materials and would not be

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Regulation 18329(c).)

regarded as “gifts” to the participants. Moreover, payments for travel, including actual transportation and related lodging and subsistence, would qualify for the exemption for gifts of travel from a 501(c)(3) corporation. Under this exception, any payments for the travel paid for by CALF are reportable gifts to the official but not subject to the Act’s gift limit. Lastly, the donors of any other gifts valued at \$50 or more provided directly to officials by individual donors to the CALF would be gifts from the individual donor, which are both reportable and subject to the gift limit.³

FACTS AS PRESENTED BY REQUESTER

You represent CALF, a 501(c)(3) nonprofit corporation that provides a two-year fellowship program for agriculturalists, with the goal of enhancing the long-term viability of California agriculture through leadership development. This program provides 24-30 persons with a two-year fellowship presenting over 70 days of training, including 14 university seminars, a 10-day national seminar and a 15-day international travel seminar. To date, the program has produced over 1,100 graduates.

As an extension of this existing fellowship program, CALF intends to resume its “California Regulatory Agency Fellows Program” to provide government agency managers, whose responsibilities involve policy implementation or interpretation, with enhanced understanding of the economic consequences of their regulatory actions on California agriculture. The three-day/two-night educational program, and tour of California farms and ranches, is designed to deepen the regulators’ understanding of food production systems, and to introduce leadership topics through both classroom and experiential learning. Participants will be provided with travel, lodging, and meals for the three-day program.

The fellowship program includes the California Educational Exchange Program (“CA Exchange”), which is open to California State employees and California nonprofit influencers, and the California County Educational Exchange Program (“CO Exchange”) a new program open to California County and City employees (and, in the case of the Agriculture Commissioner’s Office, potentially State employees) and California County influencers. The California Agricultural Leadership Foundation administers both programs.

Back in 2011, the FPPC reviewed the CALF educational fellowship program and California Regulatory Agency Fellows Program. At that time, the FPPC determined that the programs and fundraising structure as described would not result in gifts to officials, and therefore complied with the Political Reform Act. (See *Titus* Advice Letter, No. I-11-196 and *Titus* Advice Letter I-11-076.) After a break from operating these programs, CALF is interested in restarting its efforts, and you request updated advice on the FPPC’s 2011 guidance.

You have stated that CALF will continue to operate its funding plan as discussed in the *Titus* Advice Letter, No. I-11-196, to ensure that CALF, and not its outside donors, would be the

³ Note additionally, that any official receiving reportable gifts may also be disqualified from taking part in governmental decisions implicating the source of the gift if it is reasonably foreseeable that the decision will have a material financial effect on the source. (See Sections 87100, *et seq.*)

source of any “gifts” to state agency participants. More specifically, the funds will be solicited as follows:

“Instead of soliciting sponsors to specifically fund the California Regulatory Agency Fellows Program, CALF will instead pay the costs of the program using its general treasury funds which are not solicited or earmarked for any particular purpose. To the extent donors are solicited, solicitations will be general in nature, providing an overview of all of CALF’s programs, and not the California Regulatory Agency Fellows Program. It will be clear to donors that their donations will not be ‘used solely or primarily to make gifts to officials.’”

The *Titus* Advice Letter, No. I-11-196 also included information on CALF’s income and expenditures from its 2010 Annual Report. You have stated that this information is still an accurate reflection of CALF’s income and expenditures. It includes the following points:

1. CALF received donations from approximately 260 entities. This understates the number of donors since donations from golf tournaments, alumni breakfast events, and class donations involve small donations from many individuals. As examples, the Colusa breakfast involved over 300 people and the Western Agriculture Expo breakfast involved over 600 people.
2. The vast majority of donations come from individuals. There are several corporate gifts, a couple of private foundations, and a few 501(c)(3) non-profits.
3. The average donation is about \$5,300, a figure skewed by a couple of very large donations. 40% of donations are less than \$1,000.
4. The vast majority of funds raised by CALF go toward delivery of the two-year California Agricultural Leadership Program. Of the slightly more than \$1.8 million spent in 2009, 64% went to deliver the two year program, 13% went to fundraising, and 23% went to general administrative costs. The annual cost of the Regulatory Agency Fellows Program is estimated to be around \$15,000, which would represent less than 1% of the overall expenditures of the Foundation. The other major program is the DC Exchange in which about 20 agency people from Washington DC come to see firsthand family farms in California. The Foundation normally spends about \$35,000 to \$40,000 on this program each year.

Small Gifts to Participants from Individual Donors

In a follow up email, you also state that there may be situations where individual donors provide small gifts to program participants. CALF will not be changing how their program funding operates, but they want to make sure that their program materials address for their program participants the circumstances where donors make small gifts directly to anyone who files a Form 700 for items that absent an exception would be a reportable gift to the program participant.

CALF will provide the participants with a list of names or companies for any in-kind donations provided to fellows in the course of their program provided by a non-governmental agency. This could include transportation, lodging, meals, etc. This would allow a participant to pay

the cost of the “gift” if needed while involved in the California Exchange program. CALF will work with donors to keep the value of in-kind donations well below the \$520 threshold.

ANALYSIS

A gift is defined under Section 82028(a) as:

... any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

The Act provides, at Section 89503(c) that:

“No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than [\$520] if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.”⁴

Based in the information provided, the public officials who will be participating in the program would be subject to this annual gift limit. CALF, a 501(c)(3) corporation, will fund this program through donations provided by outside parties with an interest in California agriculture, who will not have control or input in selecting the public officials invited to participate, persons chosen as program presenters, or the tour itinerary. Rather, CALF will make these decisions unilaterally. Based on your facts, there are two exceptions to the Act’s general gift rules that would apply to CALF’s educational fellowship program.

The “Informational Material” Exception

Expressly excluded from the Act’s definition of “gift” is “informational material,” broadly understood to include “any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks.” (Section 82028(b)(1), Regulation 18942.1.) “Informational material” may include “[b]ooks, reports, pamphlets, calendars, periodicals, photographs, audio and video recordings, flash drives, CD-ROMS, or DVD ROMS or other similar recordings, or free or discounted admission to informational conferences or seminars.” (Regulation 18942.1(a).)

As such, the value of the program itself and the course materials provided in connection with the educational program would not be regarded as “gifts” to participants, if provided for the purpose of educating the participants in matters related to the performance of their official duties.

⁴ The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. (Section 89503(f); Regulation 18940.2.)

The “501(c)(3) Exception”

Under the Act, travel is presumed to confer some personal benefit on a public official. Thus, absent an applicable exception, travel costs paid for by a third party for which the official does not provide consideration of equal or greater value are generally gifts subject to reporting and regulation under the Act.

Under some circumstances, however, although a travel payment, advance, or reimbursement may be a reportable gift, the gift limit is not applicable. Section 89506(a)(2) sets forth an exception to the Act’s gift limits for certain travel payments, advances, or reimbursements, and provides in pertinent:

“(a) Payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following applies:

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.”

Because payments for the travel and lodging associated with this program will be paid from funds solicited from outside donors, we begin by determining whether the true source of such payments would be CALF, which will administer the program, or the donors who provide the funding for the program. Shortly after we last advised as to whether the educational fellowship program complied with the Act’s gift rules, the Commission adopted amendments to Regulation 18945 at the November 10, 2011 Commission Meeting. As amended, Regulation 18945 states in pertinent part:

(a) The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions:

(1) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift;

(2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or

(3) the person receives a payment from a source after the payment was solicited by the official or the official's agent for the purpose of making a gift to the official.

(b) Under any of the conditions identified in subdivision (a)(1)-(3), the source of the payment is the source of the gift.

You indicate that CALF does not state in its fundraising solicitations that the funds are intended for the California Regulatory Agency Fellows Program. Assuming that CALF's donors are not otherwise advised that their donations would be used for that purpose, a donor would not know, when responding to a fundraising request, that the donation would be used to make gifts to officials, as the officials are not identified as intended recipients of the gifts.

What remains now is to determine whether CALF's donors would have an understanding that that the sole or primary purpose of the payment is to make gifts to public officials.

You have indicated that CALF continues to be funded through donations from about 260 distinct sources, and in addition CALF raises funds from events such as golf tournaments and breakfasts, attended by many hundreds of persons not included among the 260 "donors" enumerated above. You have also indicated that the California Regulatory Agency Fellows Program would amount to a small fraction (less than 1 percent) of CALF's normal annual expenditures.⁵ Under these facts, when a donor does not know or request that a donation be used specifically to fund the California Regulatory Agency Fellows Program, the donor would *not* have an "understanding that the payment will be used for the sole or primary purpose of making a gift to an official."

We conclude, therefore, that CALF's current plan to raise funds for the California Regulatory Agency Fellows Program would not result in classification of donors – who neither know nor direct that their donations be used to fund this program – as sources of gifts to public officials. Rather, the source of any gifts of travel would be CALF which, as a *bona fide* 501(c)(3) nonprofit corporation, would qualify for the exemption provided by Section 89506(a)(2) for gifts of travel from 501(c)(3) corporations. However, while the payments meet the exception for a gift of travel from a 501(c)(3) corporation, we caution that although the payments are not subject to the Act's gift limit, the payments still constitute gifts to the official and must be reported as gifts from CALF on the official's statement of economic interests.

Gifts from Individual Donors

Based on the facts provided, officials who receive small gifts directly from individual donors to CALF would receive gifts under the Act, and the receipt of these gifts may trigger

⁵ We note that this statistical background data on CALF's funding was provided in connection with the prior *Titus* Advice Letter. You have confirmed that this information is unchanged and reflective of CALF's current funding.

reporting and disqualification obligations on the part of recipients.⁶ The Act regulates the receipt of gifts by public officials in three ways:

- **Gift Limit of \$520:** The Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$520 from a single source in a calendar year.⁷ (Section 89503; Regulation 18940.2.) This gift limit applies to all public officials. (Sections 89503(a) and 87200.)
- **Gift Reporting:** So that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. (Sections 87200 - 87210.)
- **Conflict of Interest Disqualification:** The Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$520 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 and 87103(e); Regulations 18700 and 18702.4.)

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

By: Zachary W. Norton
Senior Counsel, Legal Division

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⁶ Neither of the exceptions to the general gift rules discussed above would apply to gifts from individual donors made directly to participating officials.

⁷ Note that the adjusted annual gift limit amount in effect for the period January 1, 2023, to December 31, 2024, is \$590.